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U.S. Department of Justice

Immigration and Naturalization Service

PUBLIC COPY

OFFICE OF ADMINISTRATIVE APPEALS
425 Eye Street N.W.
ULLB, 3rd Floor
Washington, D.C. 20536

File: [REDACTED] Office: TEXAS SERVICE CENTER

Date:

JAN 30 2013

IN RE: Petitioner: [REDACTED]
Beneficiary: [REDACTED]

Petition: Immigrant Petition for Alien Worker as a Multinational Executive or Manager Pursuant to Section 203(b)(1)(C) of the Immigration and Nationality Act, 8 U.S.C. 1153(b)(1)(C)

IN BEHALF OF PETITIONER:

[REDACTED]

Identifying data deleted to
prevent identity information
invasion of personal privacy

INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office which originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. 103.5(a)(1)(i).

If you have new or additional information which you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. Id.

Any motion must be filed with the office which originally decided your case along with a fee of \$110 as required under 8 C.F.R. 103.7.

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS

[Signature]

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The preference visa petition was denied by the Director, Texas Service Center, and is now before the Associate Commissioner for Examinations on appeal. The appeal will be dismissed.

The petitioner was incorporated in 1999 in the State of Florida and claims to be a subsidiary of Agropecuaria Alexandria Ltda., located in Brazil. The petitioner is engaged in the hotel business. It seeks to employ the beneficiary as the general manager. Accordingly, the petitioner endeavors to classify the beneficiary as an employment-based immigrant pursuant to section 203(b)(1)(C) of the Immigration and Nationality Act (the Act), 8 U.S.C. 1153(b)(1)(C), as a multinational executive or manager. The director determined that the petitioner had not established that the beneficiary had been and will be employed in a managerial or executive capacity.

On appeal, counsel asserts that the director's findings are incorrect and submits additional evidence regarding each entity's finances.

Section 203(b) of the Act states, in pertinent part:

(1) Priority Workers. -- Visas shall first be made available . . . to qualified immigrants who are aliens described in any of the following subparagraphs (A) through (C):

* * *

(C) Certain Multinational Executives and Managers. -- An alien is described in this subparagraph if the alien, in the 3 years preceding the time of the alien's application for classification and admission into the United States under this subparagraph, has been employed for at least 1 year by a firm or corporation or other legal entity or an affiliate or subsidiary thereof and who seeks to enter the United States in order to continue to render services to the same employer or to a subsidiary or affiliate thereof in a capacity that is managerial or executive.

The language of the statute is specific in limiting this provision to only those executives and managers who have previously worked for the firm, corporation or other legal entity, or an affiliate or subsidiary of that entity, and are coming to the United States to work for the same entity, or its affiliate or subsidiary.

A United States employer may file a petition on Form I-140 for classification of an alien under section 203(b)(1)(C) of the Act as a multinational executive or manager. No labor certification is required for this classification. The prospective employer in the United States must furnish a job offer in the form of a statement

which indicates that the alien is to be employed in the United States in a managerial or executive capacity. Such a statement must clearly describe the duties to be performed by the alien.

The issue in this proceeding is whether the beneficiary has been and will be performing managerial or executive duties.

Section 101(a)(44)(A) of the Act, 8 U.S.C. 1101(a)(44)(A), provides:

The term "managerial capacity" means an assignment within an organization in which the employee primarily--

- (i) manages the organization, or a department, subdivision, function, or component of the organization;
- (ii) supervises and controls the work of other supervisory, professional, or managerial employees, or manages an essential function within the organization, or a department or subdivision of the organization;
- (iii) if another employee or other employees are directly supervised, has the authority to hire and fire or recommend those as well as other personnel actions (such as promotion and leave authorization), or if no other employee is directly supervised, functions at a senior level within the organizational hierarchy or with respect to the function managed; and
- (iv) exercises discretion over the day-to-day operations of the activity or function for which the employee has authority. A first-line supervisor is not considered to be acting in a managerial capacity merely by virtue of the supervisor's supervisory duties unless the employees supervised are professional.

Section 101(a)(44)(B) of the Act, 8 U.S.C. 1101(a)(44)(B), provides:

The term "executive capacity" means an assignment within an organization in which the employee primarily--

- (i) directs the management of the organization or a major component or function of the organization;
- (ii) establishes the goals and policies of the organization, component, or function;
- (iii) exercises wide latitude in discretionary decision-making; and

(iv) receives only general supervision or direction from higher level executives, the board of directors, or stockholders of the organization.

In support of the petition, the following list of the beneficiary's proposed duties in the United States was provided:

- Manages the hotel to ensure efficient and profitable operation.
- Establishes standards for personnel administration and performance, service to patrons, room rates, advertising, publicity, credit, food selection and service, and type of patronage to be solicited.
- Plans dining room, bar, and special events operations.
- Allocates funds, authorizes expenditures, and assists in planning budgets for hotel's departments.
- Interviews, hires, evaluates, and fires personnel.
- Delegates authority and assigns responsibilities to department heads.

On April 14, 2001, the Service sent the petitioner a request for additional evidence. The petitioner was instructed, in part, to provide a detailed description of the beneficiary's duties, both abroad and in the United States.

The director included, almost verbatim, the beneficiary's duties, both abroad and in the United States, concluding that neither set of duties qualifies the beneficiary as a manager or executive. Specifically, the director stated that the foreign entity's organizational chart, submitted in response to the request for additional evidence, indicates that rather than supervising employees the beneficiary appears to have been performing the duties associated with the departments which were listed under his control. The director also noted that while the employees supervised by the beneficiary in the United States have managerial titles, their duties are merely those associated with the daily business of a hotel, and as such the employees supervised cannot be considered supervisory, professional, or managerial.

On appeal, counsel refers to the percentage breakdown of the beneficiary's duties in the United States, asserting that at least 61% of those duties are "exclusively executive functions" and that the remaining 39% of the duties are managerial. Counsel merely disagrees with the director's findings, but submits no new evidence to support his claim. Simply going on record without supporting documentary evidence is not sufficient for the purpose of meeting

the burden of proof in these proceedings. Matter of Treasure Craft of California, 14 I&N Dec. 190 (Reg. Comm. 1972). Contrary to counsel's apparent misconception, most of the beneficiary's overseas duties, such as research analysis, supervising cattle care, participation in symposiums and lectures and conducting lectures, which collectively comprise approximately 65% of the beneficiary's duties, cannot be considered executive. Rather, they are the daily operational duties of the foreign entity. While the Service acknowledges the significant contributions made by the beneficiary in performing these duties, the fact remains that these tasks are not qualifying and would normally be performed by subordinate employees, not by someone claiming to be an executive or manager. As accurately pointed out by the director, the petitioner must establish that the beneficiary devotes the primary amount of his time to qualifying duties. In the instant case, at least 65% of the beneficiary's time is spent performing nonqualifying duties. Therefore, it cannot be concluded that the beneficiary's employment abroad was managerial or executive.

Counsel also disputes the director's conclusion regarding the beneficiary's duties for the U.S. petitioner, asserting that the beneficiary heads all of the petitioner's operations and that lower level managers report directly to the petitioner with information provided by the organization's "functionaries." Counsel points out various reports of daily room sales data, submitted in support of the appeal. Although counsel asserts that the reports are generated by lower level managers who report to the beneficiary, no evidence has been submitted in support of this claim. As previously stated, simply going on record without supporting documentary evidence is not sufficient for the purpose of meeting the burden of proof in these proceedings. Id.

Upon thoroughly reviewing the arguments made and the documents submitted, it is concluded that counsel's arguments are not persuasive. In examining the executive or managerial capacity of the beneficiary, the Service will look first to the petitioner's description of the job duties. See 8 C.F.R. 204.5(j)(5). In this instance, the director accurately noted that the beneficiary's job predominantly involves supervising employees who, despite their managerial titles, are not managerial, supervisory, or professional. And while the petitioner indicates that the beneficiary has significant discretion over the hotel's daily processes and over the hotel staff, the petitioner does not provide any evidence that would indicate that the beneficiary has ultimate managerial or executive authority over these functions, particularly in light of the organizational chart which shows two other employees who, unlike the beneficiary, are at the top of the organizational hierarchy. The description of the beneficiary's job duties leads the Service to conclude that the beneficiary is performing as a professional or "staff officer," but not as a

manager or executive. For this reason, the petition cannot be approved.

Furthermore, the organizational charts submitted for the U.S. petitioner and its foreign counterpart show that most of the individuals who occupy the top managerial positions in the foreign entity's hierarchy also occupy similar top level positions with the petitioning entity. Though not specifically discussed by the director, the fact that the petitioner claims to use the same employees to run its organization that the foreign company was using leads to questions of how the foreign entity will continue to function when most of the individuals who run the company are working in another country. This significant discrepancy renders the petitioner's organizational chart dubious at best. However, as the appeal will be dismissed on the grounds discussed above, this issue need not be addressed further.

In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. 1361. The petitioner has not sustained that burden.

ORDER: The appeal is dismissed.